

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ALLEGHENY PROPERTY
HOLDINGS, INC.

Plaintiff,

v.

UNITED SPECIALTY INSURANCE
COMPANY,

Defendant.



22-CV-218 (JLS) (HKS)

DECISION AND ORDER

Plaintiff Allegheny Property Holdings, Inc., commenced this action in New York State Supreme Court, Chautauqua County, on October 11, 2021. Dkt. 1-1. Defendant United Specialty Insurance Company removed the case to this Court on March 17, 2022, based on diversity jurisdiction. Dkt. 1, at 1–2.

On March 24, 2022, Defendant moved to dismiss the complaint for lack of jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(5), arguing that Plaintiff did not timely effect service of the complaint. Dkt. 2. In response, Plaintiff cross-moved for an extension of time, *nunc pro tunc*, to complete service of process. Dkt. 9. Defendant filed a combined reply in support of its motion and response to Plaintiff's cross-motion. Dkt. 10.

On November 16, 2023, United States Magistrate Judge H. Kenneth Schroeder, Jr., issued a Report and Recommendation (“R&R”),¹ recommending that this Court: (1) deny Defendant’s motion to dismiss; and (2) grant Plaintiff’s motion for an extension of the deadline to complete service of process. Dkt. 11.

Neither party objected to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

Though not required to do so here, this Court nevertheless reviewed Judge Schroeder’s R&R. Based on that review, and absent any objections, the Court accepts the R&R.


For the reasons stated above and in the R&R, the Court denies Defendant’s motion to dismiss (Dkt. 2) and grants Plaintiff’s cross-motion for an extension of time for service of process (Dkt. 9). The Court refers this case

¹ On March 25, 2022, this Court referred the case to Judge Schroeder for all pretrial matters, pursuant to 28 U.S.C. §§ 636(b)(1)(A)–(C). Dkt. 3.

back to Judge Schroeder for further proceedings, consistent with the referral order at Dkt. 3.

SO ORDERED.

Dated: February 29, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE